Roma Baking Company *and* Teamsters Local Union No. 688. Case 14–CA–13835

July 30, 1982

DECISION AND ORDER

On October 27, 1980, Administrative Law Judge Norman Zankel issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to Respondent's exceptions.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

The Administrative Law Judge concluded that Respondent violated Section 8(a)(1) of the Act by discharging Supervisor Robert Hoskins. We find merit in Respondent's exceptions to the Administrative Law Judge's conclusion.

In our recent decision in *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402 (1982), we held that the protection of the Act does not extend to supervisors who are disciplined or discharged as a result of their participation in union or concerted activity. In so doing, we overruled *DRW Corporation d/b/a Brothers Three Cabinets*, 248 NLRB 828 (1980), on which the Administrative Law Judge relied in finding Hoskins' discharge unlawful, and similar cases to the extent those cases held that a violation is established when the discipline or discharge of supervisors is an "integral part" of an employer's pattern of unlawful conduct directed against employees. Accordingly, we conclude, for the reasons fully set forth in *Parker-Robb*, that there is no basis for finding the discharge of Supervisor Hoskins unlawful.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that the Respondent, Roma Baking Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees regarding their union sentiments.

[1] In its exceptions, Respondent contends that no competent evidence was presented that it meets the Board's jurisdictional standards. We find no merit in this contention. Thus, Respondent was a party in a prior Board representation proceeding, *Roma Baking Company*, Case 14–RC–9176 (Decision and Direction of Election dated June 12, 1980). At the hearing in that case, Respondent, an employer engaged in both nonretail and retail sales, entered into stipulations that during the 12-month period ending December 31, 1979, a representative period, it purchased from other employers engaged in commerce goods and services in an amount in excess of $50,000. Based thereon, the Regional Director for Region 14 found that Respondent met both the Board's statutory and discretionary standards for the assertion of jurisdiction. Although the Regional Director's decision was subsequently vacated upon withdrawal of the petition, we note that Respondent did not seek to contest the Regional Director's findings concerning the jurisdictional facts by filing a request for review of his decision nor does Respondent now argue that the Regional Director's findings with respect to those facts were erroneous or that changed circumstances require a reexamination of those facts. Further, at the unfair labor practice hearing, Respondent's attorney stated that "for purposes of this hearing we are admitting [jurisdiction]." Moreover, jurisdictional allegations sufficient to bring Respondent within the Board's statutory and discretionary jurisdictional amount standards were contained in par. 2(c) of the complaint. In its original answer to the complaint, which set forth enumerated paragraphs corresponding to those of the complaint, Respondent answered the allegations of par. 2(c) by stating that it "admits the allegations of paragraph 4(c)." We note that the complaint contains no par. 4(c). Thus, it appears that Respondent either intended to admit the jurisdictional facts alleged in the complaint or that it filed no specific answer to those allegations in which case, under Sec. 102.20 of the Board's Rules and Regulations, Series 8, as amended, such allegations may have been deemed to be admitted. Finally, we note that Respondent did not attempt to amend its answer to deny the allegations of jurisdiction in the complaint until after the Administrative Law Judge had raised the matter at the hearing and, although the Administrative Law Judge afforded Respondent the opportunity to support its amended answer by stating that he would consider any evidence offered by it to controvert the jurisdictional findings in the prior representation case, Respondent introduced no such evidence. Accordingly, we find that the assertion of jurisdiction here is proper.

Respondent has alleged, in essence, that the Administrative Law Judge's resolutions of credibility are the result of bias. After careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B.* v. *Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In sec. II,A, of his Decision, the Administrative Law Judge inadvertently referred to "Imo" rather than "Supervisor Hoskins" as having been scheduled to work on May 26, 1980.

[2] In par. 1(h) of his recommended Order, the Administrative Law Judge used the narrow cease-and-desist language, "in any like or related manner." We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and have concluded that a broad remedial order is appropriate. Accordingly, we shall modify the recommended Order and use the broad injunctive language, "in any other manner."

We find that it will effectuate the purpose of the Act to require Respondent to expunge from its files any references to the unlawful layoffs of Michael Bantle, John Hoskins, and Joseph Pashia on May 15, 1980, and to notify them in writing that this has been done and that evidence of their unlawful layoffs will not be used as a basis for future personnel actions against them.

[3] Member Jenkins concurs with his colleagues' dismissal of the complaint with respect to Supervisor Hoskins, but does so for the reason that no violation has been shown under the "integral part" or "pattern of conduct" doctrine. See his concurring opinion in *Parker-Robb Chevrolet, Inc., supra.*

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

(b) Issuing expressions of the futility of engaging in union activity to its employees.

(c) Telling its employees they could quit, in order to discourage their union activities.

(d) Threatening its employees with layoff or plant closure if they are successful in obtaining union representation.

(e) Threatening its employees with changed working conditions in reprisal for engaging in union activities.

(f) Discriminating against its employees by laying off any of them for engaging in union activities.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Michael Bantle, John Hoskins, and Joseph Pashia immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make each whole in the manner described in the section of the Administrative Law Judge's Decision entitled "The Remedy" for any loss of pay or other benefits suffered by reason of their discriminatory layoffs on May 15, 1980.

(b) Expunge from its files any references to the unlawful layoffs of Michael Bantle, John Hoskins, and Joseph Pashia on May 15, 1980, and notify them in writing that this has been done and that evidence of their unlawful layoffs will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its St. Louis, Missouri, location copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT question you regarding your union activities, sentiments, and feelings.

WE WILL NOT say anything to you to indicate it is futile for you to engage in union activities.

WE WILL NOT tell you you can quit your jobs in order to discourage your union activities.

WE WILL NOT threaten to lay you off or to close our plant because you engage in union activities or because you are successful in obtaining a union to represent you.

WE WILL NOT threaten to change your working conditions because you engaged in union activities.

WE WILL NOT discriminate against you by laying any of you off because you engage in union activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce any of you because you engage in, or refuse to engage in, any of the protected activities described above.

WE WILL offer Michael Bantle, John Hoskins, and Joseph Pashia immediate and full reinstatement to their former jobs or, if those po-

sitions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make each of them whole for all loss of pay and other benefits suffered as a result of their May 15, 1980, layoffs, with interest.

WE WILL expunge from our files any references to the unlawful layoffs of Michael Bantle, John Hoskins, and Joseph Pashia on May 15, 1980, and WE WILL notify them that this has been done and that evidence of their unlawful layoffs will not be used as a basis for future personnel actions against them.

ROMA BAKING COMPANY

DECISION

STATEMENT OF THE CASE

NORMAN ZANKEL, Administrative Law Judge: This case was heard before me on July 30, 1980,[1] at St. Louis, Missouri.

Upon an original charge filed by Teamsters Local Union No. 688 (the Union), a complaint and notice of hearing was issued by the Board's Regional Director for Region 14 on July 3.

The complaint alleges that Roma Baking Company (Respondent) violated Section 8(a)(1) of the National Labor Relations Act, as amended (the Act), by a variety of independent activities including unlawful interrogation, expressing futility of union representation, unlawfully suggesting employees quit if they were unhappy working for Respondent, and threatening employees with economic reprisals consisting of loss of employment and undesirable changes in their working conditions if the Union became their bargaining representative, and threatening to go out of business if the employees chose to be represented by a labor organization.

An additional 8(a)(1) violation is alleged to have occurred when Respondent terminated the employment of its supervisor, Robert Hoskins.

Finally, the complaint alleges the layoff of employees Michael Bantle, John Hoskins, and Joseph Pashia was discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

Respondent filed a timely answer to the complaint. The answer admitted certain matters but denied the substantive allegations and that it committed any unfair labor practices.

All parties appeared at the hearing. Each was represented by counsel and was afforded full opportunity to be heard, to introduce and meet material evidence, to examine and cross-examine witnesses, to present oral arguments, and to file briefs. I have carefully considered the contents of the briefs filed by counsel for the General Counsel and Respondent's counsel.

[1] All dates hereinafter are 1980 unless otherwise stated.

Upon consideration of the entire record and the briefs, and my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

No issue is raised as to jurisdiction or labor organization status. Based on the complaint allegations and Respondent's admissions, I find Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The following recitation of facts is a composite of relevant unrefuted oral testimony, supporting documents, and other undisputed evidence. Wherever material conflicts exist, they are resolved. Not every bit of evidence is discussed. Nonetheless, I have considered all of it together with all arguments of counsel. Omitted matter is considered irrelevant or superfluous.

In late April or early May, a group of Respondent's employees met and discussed the possibility of union representation. Night-shift Supervisor Robert Hoskins[2] participated in such discussion. In early May, initial contact was made with the Union. Supervisor Hoskins initiated this contact. He talked with a union representative. Supervisor Hoskins signed a union authorization card. He took blank authorization cards and solicited the signatures of Respondent's employees. Those who signed the cards returned them to Supervisor Hoskins.

On May 14 Respondent's manager, William Jennings, spoke with Supervisor Hoskins upon Hoskins' arrival at work. Jennings told Supervisor Hoskins that he heard he had been talking about a union. The conversation continued. Jennings said if a union came in, Respondent would expect skilled labor.

Supervisor Hoskins testified, also, that Jennings told him if he continued his union activity "nobody would have a job, that they would just close the place up and everybody would be out of work." Jennings denied ever having made this statement.[3] I credit Supervisor Hoskins. His testimony regarding the threat to close is consistent with testimony of Tammy Sullivan. Sullivan still in Respondent's employ on the hearing date also testified that Jennings told her and some other employees, on May 16 or 17, "if the Union would come in that the doors could be closed."

Respondent argues Sullivan's testimony in this connection was elicited by a leading question. I disagree. The record shows otherwise. Thus, the General Counsel asked Sullivan to describe what occurred during a meeting among Jennings and a group of employees shortly after the alleged discriminatory layoffs. After founda-

[2] Hereinafter referred to as Supervisor Hoskins to distinguish him from alleged discriminatee John Hoskins.

[3] The threat of closure made to Supervisor Hoskins is not alleged as an unfair labor practice.

tional questions were answered by Sullivan, Respondent's counsel objected. Colloquy concerning the objection ensued. The objection was overruled. Counsel for the General Counsel then asked Sullivan the following general question: "What did Mr. Jennings say at that time?" Sullivan spontaneously responded, "Bill (Jennings) had told us that if the Union would come in that the doors could be closed." Accordingly, I find Sullivan's impromptu response was to a generalized question.

Sullivan impressed me with her sincerity. With specific regard to their respective testimony concerning plant closure, Sullivan's spontaniety contrasts with Jennings' self-serving denial. Testimony of current employees like Sullivan is entitled to considerable weight because it is not likely to be false. Such testimony is adverse to an employee's pecuniary interests. *Shop-Rite Supermarket, Inc.*, 231 NLRB 500 (1977); *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified other grounds 308 F.2d 89 (5th Cir.). Upon the foregoing, I find that a day or two after the May 15 layoff Jennings made the plant closure remark to Sullivan and some other employees. That remark is consistent with the one attributed to Jennings on May 14. Thus, for background purposes, I find Jennings told Supervisor Hoskins that Respondent could close the business during their May 14 conversation.

Because Sullivan's testimony described above is, at least in part, inherently consistent with that of Supervisor Hoskins and because Hoskins, in some respects, was uncontradicted in his description of the May 14 conversation, I adopt Hoskins' narration as my factual findings. Thus, I find Jennings also asked Supervisor Hoskins how many employees signed authorization cards. Supervisor Hoskins answered that 11 employees did so. He said that each employee solicited did actually sign a card. Jennings asked "what do you expect to gain out of it?" Supervisor Hoskins responded, "Well, the people aren't happy with their working conditions around here." The conversation concluded when Jennings said he would report to Respondent's owner, Edward Imo, what he knew of the employees' union activity. Also, Jennings opined that Imo would be unhappy and there would be hard feelings.[4]

Jennings admitted he reported to Imo that union activities were in progress. The entire content of their conversation is absent from the record. However, it is uncontroverted that Imo and Jennings immediately spoke to Respondent's attorney by telephone. They discussed whether or not Respondent employed individuals under 18 years of age. How the topic was initiated, and by whom, is obscure. In any event, Jennings told the attorney he knew some employees were under 18 years old. The attorney indicated a state law existed prohibiting operation of power equipment by individuals younger than 18.

Later, on May 14, Jennings spoke with the individuals working on the night shift. In attendance were alleged discriminatees Bantle, John Hoskins, and Pashia and employee Harold Batson. Supervisor Hoskins was among them. It is admitted that Jennings asked the employees what they thought they would gain from their union activity. Jennings suggested the employees should think about what they were doing. He admitted he said that if the Union came in and if Respondent would be required to pay wages for skilled labor, it would expect skilled labor.

Bantle testified Jennings told the employees at the May 14 meeting if they did not like their jobs they could quit. Jennings testified he could not recall whether or not he made that statement. Nonetheless, Jennings admitted "it's possible" he said it. Bantle's testimony, in general, was direct and forthright. His narration of what occurred during the May 14 meeting was more comprehensive and precise than Jennings'. Accordingly, I credit Bantle's account. Thus, I find that on May 14 Jennings told the employees if they did not like their jobs they could quit.

The General Counsel requested Supervisor Hoskins to further describe the events at the May 14 meeting. Supervisor Hoskins was asked, "did he [Jennings] ever say anything concerning employees losing their jobs or quitting or anything like that?" Over Respondent's objection, Supervisor Hoskins responded to Jennings "if the place did go union, he didn't expect it to even go as far as a vote. That if the place did go union he would close up the bakery part and just make pizza shells." I have considered the leading character of this question by the General Counsel. In other circumstances, Supervisor Hoskins' answer might be of diminished probative value. However, I have weighed that answer against the staccato, bare self-serving denials of Jennings. I have already noted Jennings was equivocal regarding this conversation. Thus, I am persuaded Supervisor Hoskins' testimony is probative. His reply was couched in more explicit terms than used in the General Counsel's question. The totality of these circumstances provides a basis for my reliance upon Supervisor Hoskins' testimony in connection with the alleged expression of futility of employee representation.

Bantle and John Hoskins testified that Jennings told them if the Union came into the plant the employees would have to go to bakers' school. I credit their testimony. As earlier noted, Jennings admitted referring to Respondent's expectation skilled labor would be the result of having to pay union wages. The implication of such a comment is that attendance at baker's school would be a consequence of unionization. Moreover, Jennings was not explicitly asked to deny he precisely told the employees they would have to go to bakers' school if the Union came in. Instead, Jennings merely was asked "did you threaten anybody with being forced to accept unwanted changes in their working conditions if they were members of a union?" Jennings replied, "Not at all, sir." Upon the foregoing, I find it probable Jennings actually said unionization would lead to the employees' going to bakers' school. In assessing the relative witness credibility on this issue, it is noted that when Bantle testified he was once again in Respondent's employ. As previously observed, testimony of current employees is entitled to considerable weight. This precept is especially

[4] Neither Jennings' plant closure remark made to, nor his interrogation of, Supervisor Hoskins is alleged as an unfair labor practice. Presumably, that evidence was adduced to support the General Counsel's claim of unlawful motivation and for background.

true as to Bantle inasmuch as he is one of the alleged discriminatees. Having once been terminated for what he believes to be unlawful reasons he has even more reason to be apprehensive concerning his testimony if it were false.

Supervisor Hoskins also spoke at the May 14 meeting.[5] Supervisor Hoskins complained he was not being treated fairly; the Union would protect everyone's job; Respondent would not be allowed to make changes in working conditions. Particularly, Supervisor Hoskins said that now that the Union was involved, Respondent could not alter his method of wage payment from hourly to salary as Jennings had proposed at some earlier time. Also, Supervisor Hoskins told the employees of some unidentified union benefits and explained why he thought the employees should become union members.

The meeting ended when Jennings said he would have to speak to Imo. He added Imo would be unhappy when he learned of the union activity and that if the place went union, he would have to go by union rules and some people might be laid off.

Later during the same shift, Jennings again met with the night-shift employees. Again, Supervisor Hoskins was present. Jennings reported he would have to lay off Bantle, John Hoskins, and Pashia. Jennings said they were too young to work there. Jennings ascribed this decision to a discussion with Respondent's attorney. According to Jennings, Respondent's attorney had advised that the layoff was necessary to protect Respondent. (It is undisputed that the three employees identified for layoff had operated certain power equipment.) Supervisor Hoskins testified without contradiction on this point that Jennings again asked the employees what they expected to gain from their union activity. Also, Jennings told the employees if they wanted to go union, Respondent would have to go by union rules and he (Jennings) would lay some people off.

On May 15, when the night shift began, Bantle, John Hoskins, and Pashia were laid off by Jennings. Supervisor Hoskins was present. Jennings told the employees their layoff was because they were too young to work on the machines. Each employee was told to check back a week later to see if work was available for them. Bantle and Pashia complied and were offered immediate employment in jobs requiring no machine operating. These two were actually reemployed in the new positions 2 weeks after their layoffs. Supervisor Hoskins asked Jennings whether Sullivan, who was 17 years old, would also be laid off. Jennings responded Sullivan would also be laid off.

As indicated above, Sullivan testified that Jennings met with a group of day-shift employees a day or two after the May 15 layoff. I have already credited Sullivan's testimony that Jennings told the employees if the Union came into the Company, the doors could be closed. Additionally, Sullivan credibly testified that Jennings said if he was going to pay out money for baker's school, he wanted bakers and that some of the employees would be laid off.

Supervisor Hoskins had been employed a total of 4 years. His service was broken. At first, he worked approximately 9–10 months. Then he quit. Two weeks later he returned to work. Four months after that he quit. He was absent for 3 months and then returned. Thereafter, his service was continuous.

There is background evidence upon Respondent's union sentiments. Approximately 1 year before the instant hearing, Supervisor Hoskins and Imo talked about unions. At that time, there was a strike in the bread industry. Some of Respondent's employees were engaged in casual conversation concerning the strike. It was suggested that they, too, strike. Imo told Supervisor Hoskins if he heard anything more about a strike he would get rid of whoever talked about it.

The second background conversation occurred 4–5 months before the instant hearing. Supervisor Hoskins was engaged in an argument with another employee. The subject of their discussion is unclear. Supervisor Hoskins testified, without contradiction, that Imo told him, "I don't want to hear anymore talk about a strike or nothing. If I hear anything about a strike, I will get rid of the people. If anybody ain't happy here, they can just quit now."

In approximately March or April, Supervisor Hoskins asked Jennings for a vacation late in May or June. Jennings said, "O.K. Let me know." Some time during the week of May 19, Supervisor Hoskins again asked for his vacation. This time he spoke with Imo. Imo denied the request. Imo said that Supervisor Hoskins had to be "crazy" asking for the vacation after all the trouble he started. During his conversation, Imo referred to Supervisor Hoskins as an "alley rat." According to Supervisor Hoskins, Imo said if it cost $100,000 he would get even with him for what he did. Supervisor Hoskins testified Imo said he had ways of getting even with people like him. Imo's version is slightly different. He admitted referring to spending $100,000 but did so by saying he would spend that amount rather than give Supervisor Hoskins the vacation. I credit Supervisor Hoskins' version. His was more comprehensive and inherently consistent than Imo's. Imo's testimony, generally, was less direct and candid, and more selective.

Respondent's employees customarily were paid on Friday. Supervisor Hoskins normally had Friday as a day off. Nonetheless, on Friday, May 16, Supervisor Hoskins visited Respondent's plant to pick up his check.

On May 18, Supervisor Hoskins had been scheduled to work. His wife called and said he was sick. On May 19, Supervisor Hoskins did not work due to illness.

Supervisor Hoskins worked on May 20, 21, and 22. On May 21, Supervisor Hoskins spoke with Jennings. How the conversation started is obscure. Supervisor Hoskins commented that Respondent had laid off his son, alleged discriminatee John Hoskins. He asked why Respondent would not lay him (Supervisor Hoskins) off also. Jennings admitted asking why Supervisor Hoskins started

[5] Jennings testified as to what Supervisor Hoskins is supposed to have said. That testimony is uncontroverted. I adopt Jennings, version. To the extent this is contrary to my earlier findings that Jennings was not as reliable a witness as others, it is proper to partially credit Jennings. A trier of fact is not required to believe the entirety of a witness' testimony. *Maximum Precision Metal Products, Inc., Renault Stamping Ltd.*, 236 NLRB 1417 (1978).

"this thing." Supervisor Hoskins speculated Imo would be mad if he (Supervisor Hoskins) would ask for unemployment compensation. Jennings retorted, "don't you think he's (Imo) mad now?"

Jennings said he had to speak with Imo concerning the request for layoff.

The next day, May 22, Supervisor Hoskins worked only approximately 50 minutes. Apparently, he became enraged during an altercation with another employee. Jennings sent him home.

On Friday, May 23, Supervisor Hoskins reported for his check. He spoke with Jennings. They discussed Supervisor Hoskins' requests for layoffs and vacation. Jennings told Supervisor Hoskins he could not lay him off because Respondent's attorney advised Respondent could be in trouble. Nonetheless, Jennings asked for the layoff proposal to be reduced to writing. Supervisor Hoskins prepared a handwritten note, dated May 24, requesting unemployment compensation "without trouble and a week's vacation." He gave the document to Jennings, who rejected both requests.

Supervisor Imo was scheduled to work May 26. He took ill on May 24. On May 26, his wife called Respondent and reported he was ill. On May 28 he visited his physician. The record does not establish whether Respondent had a clear policy regarding extended absences for sickness. However, Supervisor Hoskins obtained a note from his doctor. The note relates, "unable to work May 25-May 29 due to intestinal virus." This note was never presented to Respondent.

Supervisor Hoskins visited Respondent's premises on May 28, the day of the doctor's visit. His uncontradicted testimony reflects he spoke with Jennings. He told Jennings he would not come to work the rest of the week because of his illness. According to Supervisor Hoskins, Jennings responded, "O.K. fine. Let me know when you are better."

On May 30, Supervisor Hoskins visited Respondent's premises to pick up his check. He spoke to Jennings. Jennings said, "As far as I'm concerned, you quit." Supervisor Hoskins protested he did not quit and was ready to resume work. Jennings repeated Respondent considered him no longer employed. Apparently, there was no discussion on this day between the two regarding the Union, Supervisor Hoskins' illness, or his request for layoff and vacation. There is no evidence Supervisor Hoskins visited Respondent's premises thereafter.

B. *Analysis*

1. The independent 8(a)(1) violations

There are seven separate allegations that Respondent engaged in conduct proscribed by Section 8(a)(1). These allegations, contained in complaint paragraphs 5(a)–(g), will be discussed, *seriatim*, below.

Complaint paragraph 5(a) alleges Respondent unlawfully interrogated employees regarding their union sentiments on May 14. The critical fact is undisputed. Thus, it is admitted that Jennings asked the assembled night-shift employees what they thought of, or expected to gain from, their union activity.

In assessing the evidence relating to the instant issue, I must determine whether the alleged unlawful activity reasonably tends to have a proscribed effect. *Hanes Hoisery, Inc.*, 219 NLRB 338 (1975); *Impact Die Casting Corporation*, 199 NLRB 268, 271 (1972). The test is objective. Employees' perceptions of what they heard and their reactions are irrelevant. *El Rancho Market*, 235 NLRB 468, 471 (1978). The foregoing are the guiding principles in my resolution of each of the alleged independent 8(a)(1) violations.

The General Counsel contends the May 14 meeting was pervaded by Jennings' antiunion expressions. The General Counsel argues an employer commits unlawful interrogation when it questions its employees about their reasons for supporting a union. Respondent submits this remark of Jennings was privileged free speech. Respondent claims the evidence shows Supervisor Hoskins was able to, and did, present a rebuttal on behalf of the Union. Additionally, Respondent argues the facts do not support the General Counsel's claim that Jennings' injury was attended by any threat or coercion.

As stated in *Paceco, a Division of Fruehauf Corporation*, 237 NLRB 399, 399-400 (1978): ". . . an interrogation of an employee's union sympathies or his reasons for supporting a union need not be uttered in the context of threats or promises in order to be coercive. The probing of such views, even addressed to employees who have openly declared their prounion sympathies . . . is coercive." Thus, I find Respondent's position untenable.

It is true Jennings did not literally ask the employees to tell him why they wanted a union or why they engaged in union activity. Nonetheless, I conclude asking them what they expected to gain from such activity effectively requires disclosure of (1) their personal affiliation and sympathies, and (2) explanation of the reasons for their activity and interest. An employer is not free to require such revelations directly or indirectly. To do sc has a coercive impact. *ITT Automotive Electrical Products Division*, 231 NLRB 878 (1977). Upon the foregoing, I find the General Counsel has sustained his burden of proving the instant allegation. No further proof of additional threats or other proscribed conduct is necessary.

I shall find below that Jennings threatened employees at the May 14 meeting with economic reprisal, as alleged. In such a context, Jennings' request that the employees explain how they expected to benefit from their union activity is, *a fortiori*, unlawful. The Board, in *Fayette Cotton Mill*, 245 NLRB 428 (1979), left undisturbed an administrative law judge's observation that the *Paceco* rationale dictates a finding of violation in circumstances where the instant question is attended by threats of economic reprisal. Thus, I conclude the entire atmosphere engendered by Jennings at the May 14 meeting provides further basis for finding the subject question violative of Section 8(a)(1).

In complaint paragraph 5(b) it is alleged Respondent unlawfully expressed to employees the futility of union representation. The unlawful remark is attributed to Jennings during his May 14 meeting with employees.

Respondent argues that the General Counsel produced no evidence that Jennings told the employees it was

futile to be represented by a labor organization. Literally, that is true. However, Respondent apparently misconceives the thrust of this allegation. Thus, the General Counsel argues that the credited accounts of Bantle and Supervisor Hoskins support this allegation. I have credited their testimony that, on May 14, Jennings told the employees they could quit if they did not like their jobs or were not happy with them. Also, I have found Jennings said, if they went union, he (Jennings) did not expect it to even go as far as a vote. This remark was followed by a threat to close the shop. The General Counsel contends the totality of these remarks present a frustrating view of pursuit of union activity. I agree.

The combined effect of Jennings' words has the tendency to impress employees with a feeling their union activities would be fruitless. When Jennings said the employees could quit if they are not happy he, in effect, indicated union activities are not consistent with continued employment at Respondent. Next, he indicated the union activities would be short-lived by saying he did not think the matter would go as far as a vote. Finally, Jennings issued the direct threat to close if the organizational efforts were successful.

The combined effect of Jennings' words, in my view, creates a not-too-subtle expression of the frustrating and futile results of the employees' organizing activity. The Act expressly excepts from free speech protection expressions containing threats of reprisal or force or promises of benefit. Even though such statements may be couched as expressions of opinion, they are unlawful if their reasonable tendency is coercive in effect. *International Paper Company, Inc.*, 228 NLRB 1137, 1141 (1977).

In *Woodline, Inc.*, 233 NLRB 97, 100 (1977), it was found that an employer unlawfully suggested the futility of selecting a union as collective-bargaining representative by telling the employees the employer could hold the union up in court for as long as the employer wanted. That remark was coupled with a threat to close. The case at bar is analogous. Jennings' suggestion that organizational efforts might not reach the voting stage was combined with a threat to close. That context clearly signals to the employees that their statutory right to make a ballot choice might be foreclosed by Respondent. Even assuming Jennings referred to the vote in isolation, I conclude such a comment itself implies futility of continuation of the employees' exercise of the rights guaranteed in the Act. Jennings' words imply Respondent would take such action as would prevent or impede the employees' ability to make a selection regarding representation. I conclude such implication conveys futility in the exercise of Section 7 rights.

Upon the foregoing, I conclude the record contains a preponderance of evidence to prove the instant allegation.

Complaint paragraph 5(c) alleges that Section 8(a)(1) was violated when Jennings told the employees they could quit if they were not happy. Respondent's brief does not seriously contest that Jennings made the comment. Instead, Respondent claims this is another example of Jennings' exercise of the Act's Section 8(c), free speech, rights. I disagree.

If viewed in isolation, a remark telling employees they could quit if they are not happy might be lawful. However, the context in which such a statement is made is important. It gives expression and meaning to the words. Admittedly, the May 14 meeting was held by Jennings to discuss the union activity. I have already found that he made other antiunion comments. (See discussion regarding complaint par. 5(b), *supra*.) In such a context, the subject remark constitutes "a veiled threat" violative of the Act. *Markle Manufacturing Company of San Antonio*, 239 NLRB 1353, 1354 (1979). Arguably, the *Markle* case is distinguishable. There, employees were told they could quit if they did not like their employer's collective-bargaining proposals. Herein, Jennings' statement was related to employee dissatisfaction with their jobs. The distinction is not significant.

In *Markle*, the Board explicated the vice inherent in a suggestion that employees could quit. Specifically, the Board observed such remarks result in an "impression that management considers continued employment incompatible with engaging in Union activities." 239 NLRB at 1354. I conclude that meaning inescapably is derived from Jennings' words. I find those words are tantamount to apprising the listener that Respondent believes there is mutual inconsistency of union activities and employment tenure. Accordingly, I find there is merit to the allegations of complaint paragraph 5(c).

In complaint paragraph 5(d) Respondent is charged with having unlawfully threatened employees with loss of employment if they continued their union activities. Respondent, on credibility grounds, argues such a threat was not proved. Specifically, Respondent claims Supervisor Hoskins is not credible because his testimony as to the threat was presented in response to a leading question.

The character of Supervisor Hoskins' testimony is discussed *supra*, in section II,A. I have concluded more reliance should be placed upon Hoskins' manner of narration that the leading nature of the question put to him by counsel for the General Counsel. Thus, I have found Jennings did threaten to close the shop. Other evidence forms the predicate for the subject allegation. Thus, the General Counsel's brief notes the following elements in support of the alleged threat of loss of employment:

(1) Jennings told the employees if they did not like their jobs they could quit. I have already found this statement contains an implied threat of discharge.

(2) Jennings' threat to close the plant if the Union were selected as the employees' bargaining representative. That remark is discussed above and also will be found below to constitute a separate violation of Section 8(a)(1).

(3) Jennings terminated the May 14 meeting by saying that if Respondent went union some employees might be laid off. There is no evidence that Jennings proffered any factual basis for such a remark. Without such potential justification, it is unlawful to tell employees they might be laid off in the event their organizing efforts are successful. *Ohio Valley Graphic Art, Inc.*, 234 NLRB 493 (1978); *Civic Center Sports, Inc.*, 206 NLRB 428 (1973).

Respondent, in complaint paragraph 5(e) is charged with having violated Section 8(a)(1) by threatening employees with forced acceptance of unwanted changes in their working conditions because of their union activities. The basis of this allegation is Jennings' statement, on May 14, that the employees would have to go to bakers' school if the Union came in. I have found Jennings made such a statement.

The record contains no direct evidence to establish such school attendance was "unwanted" by the employees. However, the surrounding circumstances create such an implication. Thus, the record reflects the absence of a preexisting policy by which Respondent sent employees to the school. In this backdrop, Jennings' reference to the school reasonably creates an impression that more stringent qualifications would be imposed for job retention.

A supervisor's similar announcement was held unlawful in *Whiting Corporation*, 188 NLRB 500, 505 (1971). In *Whiting*, contrary to the employer's former liberal testing policy, a requirement that welding tests would be administered every 6 months if a union won an election was held to violate Section 8(a)(1). There, as herein, the statement was made in an organizational framework. I conclude this comment of Jennings reasonably tends to impart a threat of reprisal. As such, it is proscribed by Section 8(a)(1).

It is alleged, in complaint paragraph 5(f), that Respondent threatened to discharge employees if they succeeded in obtaining union representation. This allegation emanates from Jennings' discussion with day-shift employees on or about May 16. As noted, Jennings told the employees some of them would be laid off if Respondent was going to pay out money for bakers' school.

No extended discussion or analysis is necessary to resolve this allegation. Clearly, a threat of layoff conditioned upon the results of organizational efforts is violative of Section 8(a)(1). Accordingly, I find there is merit to this allegation.

Finally, Respondent is alleged to have violated Section 8(a)(1), in complaint paragraph 5(g), when Jennings told the employees if the Union came in the doors could be closed. There is no hidden meaning to this remark. It directly attributes the potential for closing the plant to the results of the employees' exercise of Section 7 rights. Respondent argues there is a distinction between Jennings' use of the word *could*, instead of *would*, when he referred to closing the plant. Respondent suggests a failure of proof in that the complaint alleges Jennings used the word would. In other circumstances, this distinction might be valid. Herein, however, I disagree with Respondent.

It is true that generally an employer freely may communicate to his employees his general views. "He may even make a prediction as to the precise effects he believes unionization will have on his company." *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 616 (1969). Such predictions must be phrased carefully and based on objective facts "to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision to close, already made."

Thus, an employer may not disguise in terms of economic predictions a veiled threat of what it will do of its own volition. It is not contended that Respondent had decided to close at any time prior to Jennings' comment. It is not asserted that Jennings referred to such economic consequences as made his prediction probable. Thus, even if Respondent's distinction were viable, the record is not susceptible to a conclusion that Jennings' statement concerning plant closing constitutes a permissible prediction.

"It is a clear violation of the Act for an employer to threaten to close its place of business if its employees choose representation by a union." *N.L.R.B.* v. *Buckhorn Hazard Coal Corporation*, 472 F.2d 53, 55 (6th Cir. 1973). "Such a reference to a threatened closure has uniformly been considered the type of interference with an organizing campaign whose effects are severe and linger on after they had been made." *Axton Candy and Tobacco Company*, 241 NLRB 1034, 1035 (1979).

Upon the foregoing, I find that, on or about May 16, Respondent unlawfully threatened employees with plant closure if they selected the Union to represent them.

2. The layoffs

Resolution of the May 15 layoffs of Bantle, Pashia, and John Hoskins is governed by the following legal principles.

The General Counsel must prove certain elements to establish his *prima facie* case of discrimination. Those elements are (a) that the affected employee had engaged in activity protected by the Act, (b) the employer had knowledge of that activity, (c) the adverse personnel action imposed upon the employee was motivated by union animus, and (d) that the discipline had the effect of encouraging or discouraging membership in a labor organization. The General Counsel has the burden of proving his case by a preponderance of the evidence. *Gonic Manufacturing Co., Div. of Hampshire Woolen Co.*, 141 NLRB 201, 209 (1963).

Respondent admits the layoffs. In defense, it contends the layoffs were necessitated by compliance with state law. It is uncontradicted that the three laid-off employees were under the legal age established for operation of power equipment. It is unquestioned that each of them actually engaged in such operations. Thus, this case presents the classic dilemma of discerning Respondent's motivation for dismissing employees where there is, on the one hand, just cause for the termination; and, on the other, an abundance of union animus. Such hostility is demonstrated by the variety of independent 8(a)(1) conduct which I have found violated the Act.

Recently, in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), the Board enunciated a two-part causation test applicable to cases such as present herein. The Board followed the test of causality applied by the Supreme Court in *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977). Initially, the General Counsel bears the burden of making a *prima facie* showing that the protected conduct of the affected employees was a motivating or substantial factor in the employer's decision to discipline (or in this

case to lay off) an employee. Once this is accomplished, the burden of proof shifts to the employer to demonstrate by a preponderance of the evidence it would have reached the same decision even in the absence of the protected conduct. *Wright Line, Inc., supra.*

There is ample evidence to show the three laid-off employees were engaged in protected activity. They signed authorization cards and were engaged in discussion of the efficacy of unionization.

As to employer knowledge, the dialogue between Jennings and the employees at the May 14 meeting shows Jennings was fully aware of the activity and the sentiments of the employees. Moreover, Jennings evinced Respondent's hostility toward unionization by making the various unlawful remarks to the employees during that meeting.

Coincidence in protected activity and adverse personnel actions against employees is a strong factor supporting an inference of unlawful motivation. *McGraw-Edison Company* v. *N.L.R.B.*, 419 F.2d 67 (8th Cir. 1969); *N.L.R.B.* v. *Harry F. Berggren & Sons, Inc.*, 406 F.2d 239, 245 (8th Cir. 1969), cert. denied 396 U.S. 823. The evidence shows the three subject employees were laid off on the day following Jennings' antiunion discussion with them. During the May 14 discussion, Jennings did not allude to their age. It was only after he consulted with Imo and Respondent's attorney that Jennings announced the employees' age was a factor. The precipitous intrusion of this element supports the General Counsel's cause.

The age factor takes on further significance. Evidence, not discussed heretofore, shows Respondent was not concerned with the age of its employees until their overt union activity. Thus, John Hoskins testified without contradiction that he had been frequently warned in the past to be careful when working around the power equipment because he was too young to be working with them. I consider the apparent delay by Respondent to comply with the state labor law supports an inference that its hurried attempt to comply was motivated by unlawful considerations.

Further, I conclude the layoffs reasonably have the proscribed effect of discouraging employee union activity. Those layoffs, having occurred only 1 day after Jennings spoke to the employees and at the height of their union activity, surely signaled to other employees the potential risks of freely expressing union sympathies. This is precisely the inhibiting effect against which the Act is designed to afford protection.

Upon the foregoing analysis, I conclude the General Counsel has established the existence of the requisite *prima facie* case of discriminatory layoffs imposed upon Bantle, Pashia, and John Hoskins.

I turn now to the analysis of Respondent's defense to the Bantle, Pashia, and John Hoskins layoffs. For Respondent to prevail, the evidence must show that these three employees would have been laid off even if they had engaged in no protected activity. I conclude the defense evidence does not sufficiently prove Respondent's contentions.

Respondent's reliance upon child labor laws is only superficially appealing. I conclude, however, that defense is a contrivance to provide integrity to the defense. I am persuaded the following factors negate the validity of Respondent's claims:

(a) Respondent delayed its adherence to the local labor laws. John Hoskins' uncontroverted testimony regarding warnings to be careful while engaged in machine operations reveals Respondent's awareness of the law's age limits for such operations months before the Union's advent. No evidence was adduced to show Respondent considered transferring the underage employees from tasks which entailed operation of power equipment or laying off any of those, or indeed other, employees before the Union came on the scene.

(b) The record shows Bantle, Pashia, and John Hoskins were treated in a disparate manner. Sullivan was also underage. She worked on the day shift. She had not participated in the May 14 discussion among Jennings and the night-shift employees. Sullivan was not laid off. Instead, Sullivan was transferred to another job. That transfer occurred some days after the alleged discriminatory layoffs.

I consider the failure to lay off Sullivan contemporaneously with the three alleged discriminatees materially detracts from Respondent's assertions in its defense. If Respondent, as it claims, found the layoffs were necessary to comply with the labor laws, no proof has been adduced to justify the failure to take that action as to Sullivan, who also had engaged in some operation of power equipment.

That Sullivan was later transferred to other work does not aid Respondent. As noted, the three alleged discriminatees were told to check back to see if there would be other positions they could fill. The record as a whole, especially the presence of the conduct found violative of Section 8(a)(1), impels only little reliance upon the suggestion that alternative job possibilities strengthens Respondent's position. Most impressive is the very different ways of Respondent's handling those alternative positions between Sullivan, on the one hand, and Bantle, Pashia, and John Hoskins on the other. Respondent's activity tends to underscore the alleged discriminatory character of the layoffs. Sullivan is distinguishable from the alleged discriminatees by virtue of her absence from overt participation in protected activity. In that posture, Sullivan was retained at work. Sullivan was not subjected to layoff before being shifted to another position. In contrast, the three employees whose union sympathies were known to Respondent were precipitously laid off. It was only after they suffered their layoffs that alternative work was found for them. The time elapsed between the layoffs and Sullivan's transfer is irrelevant.

It is logical to presume if Respondent had not been motivated by a desire to discourage union activity, it would have treated Bantle, Pashia, and John Hoskins as it did Sullivan. The failure to do so persuades me there is little probative value to Respondent's reliance on the ultimate placement of Bantle and Pashia into different jobs from which they had been laid off.

(c) The layoffs coincided with overt union activity. As already noted, Respondent was well aware that underage employees engaged in operations of power equipment 4

months before the layoffs. The delay in rectifying this situation is unexplained. Instead, the decision to lay off emanated directly from the conversation by which Jennings reported the union activity to Imo and Respondent obtained legal advice.

It is true there is no direct evidence that Imo and Jennings were told the existence of union activity should precipitate layoffs or other personnel actions. Nevertheless, it is equally true there is no evidence that any layoffs had been contemplated before Imo was notified of that union activity. The logical conclusion is that Respondent grasped upon the presence of a valid reason to lay off as a response and reaction to the union activity. Thereafter, Respondent's action was swift. The layoffs occurred the very next workday.

Respondent argues that the record shows no disparate treatment toward Bantle, Pashia, and John Hoskins. In support, Respondent observes Sullivan, too, signed a union authorization card. She was not laid off. Reliance on these facts is misplaced. There is no evidence Respondent knew Sullivan had signed a card during times material to this issue. Conversely, the three laid-off employees' sympathies were made known to Respondent during the May 14 meeting Jennings had with them.

(d) The background evidence reflects Respondent's hostility toward unionization. Thus, about a year before the instant hearing, Imo said he would get rid of whoever talked about a strike. Several months later, Imo cautioned he did not wish to hear strike talk and threatened to "get rid of the people" if such discussion came to his attention.

Upon all the foregoing, I conclude Respondent has not sustained its burden of proving the layoffs of Bantle, Pashia, and John Hoskins would have occurred absent their union activity. Accordingly, I find their layoffs discriminatory in violation of Section 8(a)(3) and (1) of the Act.

3. Supervisor Hoskins' discharge

The General Counsel contends Supervisor Hoskins' discharge was "an integral part of a pattern of conduct aimed at penalizing employees for their union activities and ridding the plant of union adherents."

Respondent asserts this discharge was imposed because Supervisor Hoskins failed to report for work without prior notice. Respondent admits Supervisor Hoskins was the initiator of the union activity and its most vigorous proponent. Nonetheless, Respondent argues the record does not establish the requisite pattern of penalizing employees for union activities. See *DRW Corporation, d/b/a Brothers Three Cabinets*, 248 NLRB 828 (1980).

Supervisor Hoskins became ill on May 24. On May 26, his wife telephoned Respondent to report his absence. Supervisor Hoskins did not report for work that week. However, after going to his doctor on May 28, Supervisor Hoskins visited Respondent's premises. There, he orally advised Jennings he would be absent from work the balance of that week, through May 30. Jennings told Supervisor Hoskins to let him know when be felt better.

Even assuming the existence of a preexisting call-in policy (which I have noted the record does not reveal) applicable to Supervisor Hoskins, the above events reflect Respondent's approval of, or at least acquiescence in, the extended absence. Thus, in view of Respondent's admitted knowledge of Supervisor Hoskins' union activity and its other unlawful conduct, I conclude the General Counsel has established a *prima facie* case that the discharge was unlawful and had undertones of hostility toward Respondent's employees engaging in protected activity.

I also conclude Respondent's approval of Supervisor Hoskins' absence makes material inroads upon its burden of proving Supervisor Hoskins would have been discharged for the claimed infraction of attendance rules. On the whole, I find the preponderance of evidence shows Supervisor Hoskins' discharge was grounded upon his union activity and a desire to interfere with the Section 7 rights of Respondent's employees.

Robert Hoskins' supervisory status is admitted. Thus, it must be determined whether the instant circumstances warrant extension of the Act's protection to him. Supervisors generally are not accorded the protection of the Act. *L & S Enterprises, Inc.*, 245 NLRB 1123 (1979); *Nevis Industries, Inc., d/b/a Fresno Townhouse*, 246 NLRB 1053 (1979); *Stop and Go Foods, Inc.*, 246 NLRB 1076 (1979).

Nonetheless, the Board and courts have held that discrimination directed against a supervisor does comprise a violation of the Act where such conduct infringes upon the statutory rights of employees. *Talladega Cotton Factory*, 106 NLRB 295 (1953), enfd. 213 F.2d 209 (5th Cir. 1954). This protection applies where such discrimination is an integral part of an employer's scheme of striking at its employees, through a supervisor's discharge, for their engaging in protected activities or to discourage them from engaging in such activities. *DRW Corporation, supra; Donelson Packing Co., Inc. and Riegel Provision Company*, 220 NLRB 1043 (1975); *VADA of Oklahoma, Inc.*, 216 NLRB 750 (1975); *Fairview Nursing Home*, 202 NLRB 318 (1973).

If there is evidence sufficient to warrant a finding that the "employer's conduct, as a whole, including the action taken against its supervisors, was motivated by a desire to discourage union activities among its employees in general . . . " (*DRW Corporation, supra*, 248 NLRB at 829) the Board has found there exists a pattern of conduct directed to coercing employees in the exercise of their Section 7 rights. The underlying rationale for such a conclusion was expressed by a Board majority thus: The Employer has "intentionally created an atmosphere of coercion in which employees cannot be expected to perceive the distinction between the employer's right to prohibit union activity among supervisors and their right to engage freely in such activity themselves." (248 NLRB at 829.)

Where there is no evidence of a tainted motive in discharging a supervisor, that conduct will not be unlawful if its tendency to interfere with employee rights is "comparatively slight, and the employer's conduct is reasonably adapted to achieve legitimate ends." *N.L.R.B.* v. *John Brown, et al., d/b/a Brown Food Store, et al.*, 380 U.S. 278, 287–288 (1965). See also *Texas Gulf Sulphur Company*, 163 NLRB 88 (1967); *National Freight, Inc.*,

154 NLRB 621 (1965); *Sibilio's Golden Grill, Inc.*, 227 NLRB 1688 (1977).

Respondent's asserted reason for the discharge of Supervisor Hoskins is patently false. There are two bases for this conclusion. First, Respondent claims Supervisor Hoskins was discharged because he absented himself without calling in. However, the credited evidence refutes that position. Thus, Jennings was orally advised on May 28 by Hoskins of the latter's illness and anticipated absence. Jennings acknowledged he understood and approved it by saying, "O.K. fine, let me know when you're feeling better."

Second, the evidence reflects Respondent varied its reasons for the discharge. Such "shifting" reasons are evidence of discrimination. *Skaggs Pay Less Drug Store*, 188 NLRB 784, 786 (1971); *Georgia Rug Mill*, 131 NLRB 1304, 1305–07 (1961). Respondent's defense that the discharge was assertedly as discipline for a breach of attendance rules is different from the reason given Supervisor Hoskins by Jennings. Thus, on May 30, Jennings told Supervisor Hoskins that he could no longer work for Respondent because Hoskins "quit." I consider these contradictory reasons seriously detract from Respondent's claim of legitimacy to its actions.

Support for a finding of unlawful conduct "is augmented [when] the explanation of the [employer's conduct] offered by the Respondent [does] not stand up under scrutiny." *N.L.R.B.* v. *Bird Machine Company*, 161 F.2d 589, 592 (1st Cir. 1947).

The record contains the following evidence relevant to a determination whether a pattern of conduct exists herein which was designed to coerce employees in the exercise of their Section 7 rights. That evidence follows.

(a) The "background" evidence discussed above reflects Respondent harbored animosity against union activity.

(b) Respondent immediately responded to the overt union activity by engaging in the conduct found herein to constitute independent violations of Section 8(a)(1) of the Act.

(c) Respondent exhibited hostility and antipathy toward Supervisor Hoskins' role in union activities. Thus, Imo, in effect, told Supervisor Hoskins the latter's union activity was reprehensible when Imo said he believed Supervisor Hoskins was "crazy" to pursue his vacation request after all the "trouble" that Supervisor Hoskins started. Also, Jennings testified to Respondent's hostility against Supervisor Hoskins. Thus, Jennings admitted he asked Supervisor Hoskins why he started the union activity and rhetorically asked Supervisor Hoskins whether he (Supervisor Hoskins) did not think Imo was already angry over Supervisor Hoskins' conduct.

(d) Virtually every employee knew of Supervisor Hoskins' role in the organizational efforts. The record shows Respondent's day and night shifts consisted of approximately 13 employees. Supervisor Hoskins obtained signatures of 11 of them on authorization cards. In Jennings' presence, Supervisor Hoskins was vocal on behalf of the Union during the May 14 meeting with the night-shift employees. These circumstances provide a ready source for setting an example for the employees. Surely, any action taken against Supervisor Hoskins would come to the attention of all the employees.

Where, as here, the asserted reasons for Supervisor Hoskins' discharge are an apparent fabrication designed to exonerate Respondent from its unlawful conduct, elements (a)–(d), above, considered with the record as a whole, are impressive reflections of a continuing pattern of conduct designed to react against the employees' union activities and coerce them from further pursuit.

Supervisor Hoskins' discharge occurred 2 full weeks after the apex of union activity, the 8(a)(3) layoffs, and the independent 8(a)(1) conduct. Also, the discharge followed by 1 week Respondent's offers to return Bantle and Pashia to work at different jobs. Conceivable, this chronology tends to favor Respondent. However, I conclude they bear little impact upon the presence of an unlawful pattern of conduct.

A realistic assessment of the facts indicates the laid-off employees had been already impressed by the lesson Respondent desired to convey. The damage was done. Although Respondent somewhat recanted, the coercive effect of the layoffs and separate 8(a)(1) conduct lingered. No evidence was adduced to show Supervisor Hoskins provided Respondent with any basis whatsoever for discipline until he became ill. Moreover, the illness first became known virtually contemporaneously with the return of Bantle and Pashia; and, at first, Supervisor Hoskins' wife telephoned Respondent to advise of his initial absence. Thus, there is no real hiatus in the sequence of events which I consider combine to form an unlawful pattern of conduct.

Arguably, *DRW Corporation* is distinguishable from the case at bar. In *DRW*, the employer announced to the employees that its supervisor was discharged because he had been a union "instigator." Herein, there is no evidence that Respondent expressly said anything to its employees which connected Supervisor Hoskins' discharge with his union activities. I consider this difference not material. Indeed, the fact that Respondent informs employees that a supervisor is laid off or discharged because of his union activities is irrelevant to the issue of that supervisor's termination. Cf. *Texas Gulf Sulphur Company, supra.*

It is clear the Board's finding of violation regarding the supervisor's discharge was not principally based, in *DRW*, on the announcement to employees. The Board's incisive analysis in *DRW* indicates its holding was based on the existence of other unlawful conduct which presented an unlawful atmosphere of coercion. The series of events effectively created an unlawful pattern of conduct.

Examples to employees of what might happen to them if they persist in the exercise of statutory rights need not be explicit. Such examples may be derived by implication from surrounding circumstances. In the present case, Respondent has not sustained its burden of showing a legitimate reason for discharging Supervisor Hoskins. In such circumstances, it is reasonable to conclude, as I have done, the discharge is part of Respondent's program of coercion of its employees. The unlawful effect of such a discharge, in this context, is inherent in the conduct. It is

a silent, yet eloquent, sign to the employees that there is a potential peril involved in pursuing their statutory rights.

Upon all the foregoing, I find that Supervisor Hoskins' discharge on May 30 constitutes a violation of Section 8(a)(1) of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Roma Baking Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union No. 688 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent unlawfully interrogated employees regarding their union sentiments on May 14, 1980, in violation of Section 8(a)(1) of the Act.

4. Respondent unlawfully expressed to employees the futility of union representation on May 14, 1980, in violation of Section 8(a)(1) of the Act.

5. Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act on May 14, 1980, when it told them they could quit if they were not happy.

6. Respondent unlawfully threatened employees in violation of Section 8(a)(1) of the Act when, on May 14, 1980, it threatened them with the loss of employment by telling them they could be laid off if Respondent went union.

7. Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act on May 14, 1980, by threatening them with reprisals when it told them they would have to go to bakers' school.

8. Respondent, on May 16, 1980, interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act by threatening to lay off employees.

9. Respondent, on May 16, 1980, interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act when it threatened to close its plant if the Union came in.

10. Respondent discriminated against its employees in violation of Section 8(a)(3) and (1) of the Act by laying off its employees Michael Bantle, John Hoskins, and Joseph Pashia on May 15, 1980.

11. Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act by discharging Supervisor Robert Hoskins on May 30, 1980.

12. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(a)(3) and (1) of the Act in a variety of ways, I shall recommend it cease and desist from engaging in such conduct in the future and affirmatively take such action as will dissipate the effect of its unfair labor practices.

Because the layoffs of Bantle, John Hoskins, and Pashia have been found unlawful, the Order shall require Respondent to offer each of them full and immediate reinstatement to his former or substantially equivalent position of employment, without prejudice to the seniority or other rights and privileges possessed by each; and to make each of them whole for any loss of earnings he may have suffered as a result of the discrimination by payment of a sum equal to that which each would have earned, absent the discrimination, to the date of Respondent's offer of reinstatement. Loss of earnings shall be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). The fact that Bantle, John Hoskins, or Pashia might still be underage for machine operations at the time the offers of reinstatement required hereunder are made is not an impediment to the recommended Order. Satisfactory alternate positions should be offered to them. *Southern Tours, Inc., and Gulf Coast Motor Lines, Inc.*, 167 NLRB 363, 380 (1967). In any event, the nature of the job offered is a matter for the compliance stage of these proceedings. *Sure-Tan, Inc. and Surak Leather Co.*, 234 NLRB 1187 (1978).

Inasmuch as I have found Supervisor Hoskins' May 30 discharge was in violation of Section 8(a)(1) of the Act, the Order shall require Respondent to offer him full and immediate reinstatement to his former or substantially equivalent job, without prejudice to his seniority or other rights and privileges (*Production Stamping, Inc.*, 239 NLRB 1183, 1184, 1193-94 (1979); *Barnes and Noble Bookstores, Inc.*, 233 NLRB 1326 (1977)) and to make him whole for any loss of earnings he may have suffered as a result of the discrimination (*DRW Corporation, supra*, the remedy section) by payment of a sum equal to that which he would have earned, absent the unlawful activity to the date of Respondent's offer of reinstatement. Loss of earnings shall be paid with interest, and computed as prescribed in *F. W. Woolworth Company, Isis Plumbing & Heating Co.*, and *Florida Steel Corporation, supra.*

The General Counsel has requested issuance of a broad remedial order "because the violations found herein come in the context of a Union organizing campaign, and therefore go to the very heart of the Act." The Board, in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), stated, "where . . . it can be further shown that a Respondent, either previous to or concurrently with (the misconduct) engaged in other severe conduct . . . a broader order may be warranted. Thus, repeat offenders and egregious violators of the Act would be subject to the traditional Board remedy for conduct which requires broad injunctive relief."

No evidence was presented herein to reflect that Respondent has a proclivity to violate the Act. I have found no authority subsequent to *Hickmott Foods*, nor has any been cited, to indicate that the mere existence of an organizational campaign is sufficient to warrant a broad proscriptive order. Accordingly, the General Counsel's request is denied. Instead, the Order herein shall require Respondent to refrain from, in any like or related manner, interfering with, restraining, and coercing its employees in the exercise of their Section 7 rights.

[Recommended Order omitted from publication.]